

INFORMATION BULLETIN #85
NOMINEE WITHHOLDING PROCEDURES
JANUARY 2003

(Replaces Information Bulletin #85 dated September 1992)

DISCLAIMER: Information Bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Nominee Withholding Procedures for Small Business Corporations, Partnerships and Fiduciaries

REFERENCES: IC 6-3-4-12; IC 6-3-4-13; IC 6-3-4-15

Withholding Requirements

Small business corporations (as defined in Section 1361 of the Internal Revenue Code), partnerships, trusts and estates must withhold Indiana adjusted gross income tax from certain payments or credits of income to nonresidents. The withholding agent must report the net income and tax withheld from this income on Form WH-18,

Indiana Miscellaneous Withholding Tax Statement for Nonresidents.
Withholding is required when:

- a. a small business corporation pays or credits Indiana income amounts to any of its non-Indiana resident shareholders as taxable dividends or undistributed taxable income that was not previously taxed (IC 6-3-4-13);
- b. a partnership pays or credits Indiana income amounts to any of its non-Indiana resident partners on their distributive shares of partnership income (IC 6-3-4-12), unless the partner is a foreign corporation qualified to do business in Indiana; or
- c. a trust or estate (fiduciary) distributes Indiana income (except income attributable to interest or dividends) to a non-Indiana resident beneficiary (IC 6-3-4-15).

The nonresident shareholder, partner, or beneficiary is entitled to claim credit for the withheld tax when filing the proper Indiana return.

Nominee Withholding Procedures

If a small business corporation, partnership, or fiduciary withholds tax from income distributions to a nonresident small business corporation, partnership or fiduciary which in turn passes through the income to a nonresident shareholder, partner, or beneficiary, the original withholding agent may designate the ultimate nonresident recipient as a “Nominee” recipient who may then claim the withheld Indiana tax.

Example. Indianapolis Partners, Ltd., an Indiana partnership, distributes \$1,000 of Indiana source rental income to one of its partners, the Ohio Revocable Trust located in Columbus, Ohio. The Ohio Revocable Trust is a simple trust which distributes all current income to the sole beneficiary, John Jones, a resident of Ohio. Indianapolis Partners, Ltd., must withhold \$34 (3.4% of \$1,000) from the distribution to the Ohio Revocable Trust.

Indianapolis Partners, Ltd., may designate John Jones as the “nominee” recipient of the income distribution on Form WH-18. The Form WH-18 must show the names and addresses of both the Ohio Revocable Trust and John Jones. The federal identification number of the trust would appear in the recipient’s block next to the trust’s name and address. Jones’ social security number must appear in the block specified for “Recipient’s Federal ID or SS Number.”

Following the end of the partnership’s tax year, Indianapolis Partners, Ltd. provides copies B and C of Form WH-18 to the Ohio Revocable Trust. The trust provides Copy C to John Jones for filing with John Jones’ IT-40PNR. John Jones reports the \$1,000 rental income on his IT-40PNR. The trust reports the \$1,000 income and \$1,000 distribution deduction on the federal fiduciary return, Form 1041. The trust’s Indiana fiduciary return (IT-41) reports no taxable income due to distributions. The trust must attach a copy of the Form WH-18 showing the “pass through” of the withheld income tax to John Jones.

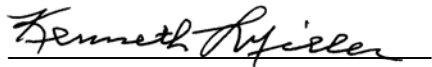
NOTE: If there is more than one partnership or fiduciary between the withholding agent and ultimate beneficiary, the withholding agent may complete Form WH-18 to reflect the initial distribution and nominee beneficiary as if there were no intermediary entities. Intermediary entities must attach a copy of the Form WH-18 to their returns to show the ultimate nominee beneficiary.

Example: Smith Farms, Inc., an Indiana S Corporation, distributes \$10,000 of Indiana source farm income to the Estate of Mary Smith, an Illinois shareholder. The Estate of Mary Smith in turn distributes the income to two Illinois Trusts, the Smith Marital Trust and the Smith Credit Trust. The two trusts in turn distribute the income to Sam Smith, also a resident of Illinois.

Smith Farms, Inc. would complete Form WH-18 showing the Estate of Mary Smith and Sam Smith as the nominee recipient. The Estate of Mary Smith and the two trusts would each file Form IT-41 with a copy of the Form WH-18. Sam Smith would report the \$10,000 of Indiana source income on his IT-40PNR and claim credit for the \$340 of withheld tax.

Additional Information

Additional information about Indiana withholding requirements may be obtained from Information Bulletin #28, Application of State and County Adjusted Gross Income Tax to Residents with Out-of-State Income and Non-Residents with Indiana Source Income.

A handwritten signature in cursive script, reading "Kenneth L. Miller", written in black ink. The signature is fluid and stylized, with a horizontal line extending from the end of the name.

Kenneth L. Miller
Commissioner